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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Application Number: 10/796,161
Filing Date: March 09, 2004
Appellant(s): DAVIS ET AL.

_____
Arthur J. Samodovitz
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 03/23/2009 appealing from the Office action mailed

12/10/2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The Appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The Appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

The following is a listing of the prior art of record relied upon in the rejection of claims

under appeal:

1. US 2004/0177120 to Kirsch filed on Mar. 7, 2003.

2. NPL: Spamhaus. December 11, 2001.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

1.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth
>
> in section 102 of this title, if the differences between the subject matter sought to be patented and the prior
>
> art are such that the subject matter as a whole would have been obvious at the time the invention was made
>
> to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be
>
> negatived by the manner in which the invention was made.

2.   Claims 1-16, and 21-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over

US 2004/0177120 to Kirsch in view of Spamhaus.

Regarding claim 1, 9, 21, The combination of Kirsch and Spamhaus teaches a method of

blocking unwanted e-mails, said method comprising the steps of:

Determining that e-mail is unwanted (Kirsch, paragraph [0025], unwanted email

messages are identified.);

determining a source IP address of said unwanted e-mail (Kirsch, paragraph [0036], IP

address determined. See also, fig. 3.).

Spamhaus discloses determining a registrant of said IP address of said unwanted e-mail

and querying an entity that manages registration of IP addresses to determine other source IP

addresses registered to said registrant of the source IP address of said unwanted e-mail.

(Spamhaus, The Spamhaus Block List ("SBL") collates information identifying the owners or

registrants of IP addresses or domains which are known to send spam (i.e. unwanted e-mail). The

Spamhaus Block List is a list of IP addresses compiled by the same team that maintains the

ROKSO database, broadcast in realtime to independent DNS-based 'Blocklist' systems. All IPs

on the SBL belong to known spammers, spam gangs, or spam support services. The SBL

includes IPs from both the ROKSO database and IPs of spam services listed in the Spamhaus

database.).

     Kirsch does disclose and in response, blocking subsequent e-mails from said other IP

addresses (Kirsch, paragraph [0025], unwanted emails are blocked.).

     Therefore it would have been obvious to one of ordinary skill in the art at the time of

invention to combine determining other source IP addresses owned or registered by an owner or

registrant of the source IP address of said unwanted e-mail as taught by Spamhaus with the

method of Kirsch in order to be able to refuse email from known spammers (Spamhaus, The

Spamhaus Block List ("SBL") can be used by most modern Mail Servers to refuse email from

known spammers and spam support services.).

     Regarding claim 2, 10, 22, The combination of Kirsch and Spamhaus teaches a method as

set forth in claim 1 further comprising the step of blocking subsequent e-mails from said source

IP address of said unwanted email (Kirsch, paragraph [0025], unwanted emails are blocked.).

wherein the step of determining other source IP addresses owned or registered by an owner or

registrant of the source IP address of said unwanted e-mail comprises the step of determining an

owner or registrant of said source IP address of said unwanted e-mail (Spamhaus, SBL listings

list known spammers and their associated IP addresses.).

Regarding claim 3, 11, 23, The combination of Kirsch and Spamhaus teaches a method as

set forth in claim 2 wherein the step of determining said registrant of the source IP address of

said unwanted e-mail is performed by querying an entity that manages registration of IP

addresses (Kirsch, fig. 2, examination of whitelist and blacklist.).

Regarding claim 4, 12, 24, The combination of Kirsch and Spamhaus teaches a method as

set forth in claim 1 wherein said entity is Internet Assigned Number Authority (Spamhaus, The

SBL includes IPs from both the ROKSO database and IPs of spam services listed in the

Spamhaus database.).

Regarding claim 5, 13, 25, The combination of Kirsch and Spamhaus teaches a method as

set forth in claim 1 wherein the step of determining that an e-mail is unwanted comprises the step

of identifying an e-mail which is attempted to be sent to multiple recipients and the same or

substantially the same text (Kirsch, paragraph [0003], emails filtered by words that appear in the

message. See also paragraph [0025], [0032], and fig. 4a and 4b.).

Regarding claim 6, 14, 26, The combination of Kirsch and Spamhaus teaches a method as

set forth in claim 1 wherein the step of determining an e-mail is unwanted comprises the step of

identifying an e-mail which is attempted to be sent to multiple recipients and contains the same or substantially the same subject line (Kirsch, paragraph [0003], emails filtered by subject line.).

Regarding claim 7, 15, 27, The combination of Kirsch and Spamhaus teaches a method as set forth in claim 1 wherein the step of determining a source IP address of the unwanted e-mail comprises the step of reading the source IP address from a header of the unwanted e-mail (Kirsch, paragraph [0003], IP address from header used to filter message.).

Regarding claim 8, 16, 28, The combination of Kirsch and Spamhaus teaches a method as set forth in claim 2 wherein the steps of blocking e-mails from said source IP address and blocking subsequent e-mails from said other IP addresses comprises the step of identifying said e-mails from said source IP address and said other IP addresses at a firewall or router, and then preventing them from passing through to a mail server(s) for their intended recipients (Kirsch, paragraph [0025], unwanted emails are blocked.).

(10) Response to Argument

In the Argument, Appellant argued in substance that:

(A) In regards to claims 1-7, 9-16, and 21-28, the combination of Kirsch and Spamhaus does not disclose: determining a registrant of said source IP address of said unwanted e-mail and querying an entity that manages registration of IP addresses to determine other source IP addresses registered to said registrant of the source IP address of said unwanted e-mail, and in response, blocking subsequent e-mails from said other IP addresses.

As to point (A), The combination of Kirsch and Spamhaus discloses "**determining a registrant of said source IP address of said unwanted e-mail**." The Spamhaus blocklist comprises a database of known spammers (Spamhaus, pg. 1-2.). Page 2 of Spamhaus shows the database records along with the associated database query used to locate those records. See Spamhaus page 2, which shows information including the registrant "CPU Guys, Inc", the IP addresses associated with the registrant, and the database reference link associated with the entry (i.e. Ref: SBX467).

The listing shows the IP addresses associated with CPU Guys, Inc. The listing shows the range of IP addresses as 63.116.175.0 through 63.116.175.255. An IP address range is typically listed this way. The last field, as indicated by 0-255 represents the 255 possible IP addresses. For example, the range of IP addresses would consist of 63.116.175.**0**, 63.116.175.**1**, 63.116.175.**2** all the way to 63.116.175.**255**. These are the IP addresses associated with CPU Guys, Inc.

In regards to "**querying an entity that manages registration of IP addresses to determine other source IP addresses registered to said registrant of the source IP address of said unwanted e-mail.**" The Spamhaus database is queried to determine the source IP addresses registered the registrant as described above. Pg. 1 of Spamhaus shows a search box for entering a SBL reference (i.e. in order to query the Spamhaus database) as well as a search box to Query an IP address. Page 2 of Spamhaus shows the query references and the listings. The listings, according to Page 1 of Spamhaus are the listings of known "spammers, spam gangs, or spam support services."

In Regards to "**and in response, blocking subsequent e-mails from said other IP addresses**", Kirsch teaches a method of filtering and blocking spam emails using blacklists which identify certain senders as spammers as well as certain evaluation criteria to block the unwanted emails (Kirsch, [0005], [0025-0029].). Therefore the combination of Kirsch and Spamhaus teach the Applicant's invention as claimed.

(**B**) In regards to claim 8, Applicant argues that the combination of Kirsch and Spamhaus does not disclose blocking emails "**at a firewall or router**".

As to point (**B**), At least [0003] of Kirsch discloses routing email messages based on routing information contained in the header of the email, thereby disclosing the functionality of a router. The Examiner's rejection under U.S.C. 103(a) includes a question of obviousness and a patent may not be obtained if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter

pertains. In addition to the functionality of a router disclosed by Kirsch, blocking traffic from a source IP address at a router or firewall is a common and well known technique in the art that would have been obvious to one of ordinary skill at the time of the invention.

(C) Applicant's argues that the combination of Kirsch and Spamhaus would yield a different solution than that of claim 1.

As to point (C), Kirsch and Spamhaus disclose the limitations of the Applicant's invention as described above. It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teaching of Kirsch and Spamhaus since Kirsch seeks to block spammers and Spamhaus provides a list of spammers to block. For example, Spamhaus provides the registrant and IP address information of spammers through querying a database. It would be obvious to combine Spamhaus with Kirsch in an effort to block the known spammers. The combination is further supported by the facts that 1) the Spamhaus Block List is broadcast to "Blocklist" systems (Spamhaus, pg. 1.), and 2) Kirsch uses a "Blocklist" system (i.e. the blacklist as disclosed in at least [0013-0014], and [0025-0030] of Kirsch.).

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related

Appeals and Interferences section of this Examiner's answer.

Respectfully submitted,

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